

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

NOEMI SOSA, et al.,

Plaintiffs,

v.

DEPARTMENT OF HEALTH, et al.,

Defendants.

Civil No. 02-2841 (JAF)

O R D E R

Before the court is Defendants' motion for reconsideration, filed on March 31, 2005. Docket Document No. 145. Defendants urge us to reconsider our previous finding that their statute of limitations defense was untimely. Id. Plaintiffs opposed Defendants' motion on May 18, 2005. Docket Document No. 151.

Defendants argue that although they waited until the eve of trial to raise the limitations defense, they did not waive the defense because: (1) if the limitations period has expired, we have no jurisdiction to hear the case, and so the defense can be raised at any time; (2) Defendants did not have a previous opportunity to raise the defense, since default judgment was entered against them before they had an opportunity to answer the complaint; and (3) the Supreme Court decision in Jones v. R.R. Donnelley & Sons, 541 U.S. 369 (2004), renders the complaint time-barred, but Defendants could not raise this defense until relatively recently, when it became clear

Civil No. 02-2841 (JAF)

-2-

1 that Jones applied. Docket Document No. 145. We are unmoved by these
2 arguments, and deny Defendants' motion for reconsideration.

3 "Motions for reconsideration are entertained by courts if they
4 seek to correct manifest errors of law or fact, present newly-
5 discovered evidence, or when there is an intervening change in the
6 law." Standard Química de Venezuela v. Central Hispano Int'l, Inc.,
7 189 F.R.D. 202, 205 (D.P.R. 1999) (citing Jorge Rivera Surillo & Co.
8 v. Falconer Glass Indus., Inc., 37 F.3d 25, 29 (1st Cir. 1994).
9 Defendants have made no showing, nor do we find, that any such
10 circumstance is presented here.

11 We need not address Defendants' first two arguments for
12 reconsideration, as we have already determined that Defendants waived
13 the limitations defense by failing to raise it in either their motion
14 to dismiss or motion for summary judgment. Docket Document No. 144.
15 The only issue we need consider, then, is whether an intervening
16 change in the law forces us to reverse our previous decision. See
17 Nat'l Metal Finishing Co. v. BarclaysAmerican/Commercial, Inc., 899
18 F.2d 119, 124 n. 2 (1st Cir. 1990).

19 In Jones, the Supreme Court held that federal courts should
20 apply the four-year statute of limitations provided for in 28 U.S.C.
21 § 1658 if "the plaintiff's claim against the defendant was made
22 possible by a post-1990" enactment, whether the enactment is a
23 "stand-alone statute" or an amendment to an older statute. 541 U.S.
24 at 370. Defendants argue that Jones renders Plaintiffs' claims under
25 the Rehabilitation Act, which was enacted prior to 1990 but amended

Civil No. 02-2841 (JAF)

-3-

1 after 1990, untimely, and that this argument was unavailable to them
2 at an earlier juncture. Docket Document No. 145.

3 Defendants concede that under pre-Jones law, Plaintiffs' Equal
4 Employment Opportunity Commission ("EEOC") filing tolled the statute
5 of limitations, rendering the present federal claim timely. Docket
6 Document No. 145; see also Benitez-Pons v. Puerto Rico, 136 F.3d 54,
7 59 (1st Cir. 1998). We find nothing in Jones, § 1658, or any other
8 federal law to supplant the tolling doctrine. Defendants fail to
9 argue why we should aggressively extend Jones in such a manner, and
10 so we decline to consider this issue further.

11 We **DENY** Defendants' motion to reconsider. Docket Document
12 No. 145.

13 **IT IS SO ORDERED.**

14 San Juan, Puerto Rico, this 2nd day of June, 2005.

15 S/José Antonio Fusté
16 JOSE ANTONIO FUSTE
17 Chief U. S. District Judge